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DRY NEEDLING and PHYSIO PRODUCTS LLC,
7 PAUL KILLOREN, EDO ZYLSTRA, and AUSTIN
WOODS

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

10
11 INTERNATIONAL CENTER FOR
12 INTEGRATIVE MEDICINE, a State of
California non-profit corporation,

13 Plaintiffs,

14 v.

15 KINETACORE, a State of Colorado
16 Limited Liability Company; US DRY
NEEDLING and PHYSIO PRODUCTS,
17 LLC, a State of Washington Limited
Liability Company; IDRYNNEEDLE, a
18 Washington-based company;
MEDBRIDGE, INC., a State of
19 Washington corporation; RED CORAL
ACUPUNCTURE SUPPLIES PTY
LTD, an Australian private company;
PAUL KILLOREN; EDO ZYLSTRA;
21 and AUSTIN WOODS,

22 Defendants.

23 Case No:

24 DEFENDANTS KINETACORE
25 LLC, US DRY NEEDLING AND
26 PHYSIO PRODUCTS, LLC, PAUL
27 KILLOREN, EDO ZYLSTRA, AND
28 AUSTIN WOODS' NOTICE OF
REMOVAL OF CIVIL ACTION
UNDER 28 U.S.C. §§ 1332, 1441 AND
1446

1 **TO THE JUDGES AND CLERK OF THE UNITED STATES DISTRICT
2 COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA –
3 SOUTHERN DIVISION:**

4 **PLEASE TAKE NOTICE** that Defendants KINETACORE, LLC, US
5 DRY NEEDLING AND PHYSIO PRODUCTS, LLC, sometimes doing business
6 as IDRYNEEDLE, PAUL KILLOREN, EDO ZYLSTRA, and AUSTIN WOODS
7 (collectively "Defendants") hereby remove this civil action from the Superior
8 Court of the State of California for the County of Orange, to the United States
9 District Court for the Central District of California – Southern Division.
10 Defendants' removal is based upon 28 U.S.C. §§1332(a) and 1441 because there is
11 complete diversity of citizenship between Plaintiff International Center for
12 Integrative Medicine ("Plaintiff"), on the one hand, and each and every Defendant
13 on the other, and the matter in controversy exceeds the sum of \$75,000, exclusive
14 of interest and costs.

15 In support of this Notice of Removal, Defendants further state:

16 1. On February 17, 2016, Plaintiff obtained a Temporary Restraining
17 Order and Order to Show Cause Re: Preliminary Injunction, based upon an
18 operative Amended Complaint for Declaratory and Injunctive Relief filed in the
19 Superior Court of the State of California for the County of Orange. The operated
20 Amended Complaint is styled *International Center for Integrative Medicine, a*
21 *State of California non-profit corporation, Plaintiff vs. Kinetacore, a State of*
22 *Colorado limited liability company; US Dry Needling and Physio Products LCC, a*
23 *State of Washington limited liability company; IDryNeedle; Medbridge, Inc., a State*
24 *of Washington corporation; Red Coral Acupuncture Supplies PTY LTD, an*
25 *Australian private company; Paul Killoren, an individual and resident of the State*
26 *of Washington; Edo Zylstra, an individual and resident of the State of Michigan;*
27 *and Austin Woods, an individual and resident of the State of Washington,*
28 *Defendants.* The Amended Complaint bears Orange County Superior Court Case

1 Number 30-2016-008-35053-CL-MC-CJC. The Amended Complaint asserts
2 causes of action for 1) Defendants lack any legal authority to insert acupuncture
3 needles – Declaratory Judgment; and 2) The Pharmacy Act does not allow
4 Defendants to give away, sell, or otherwise furnish acupuncture needles –
5 Declaratory Judgment. Copies of the Complaint, Amended Complaint and TRO
6 with supporting documentation and exhibits, which comprise all the documents
7 ultimately served on Defendants and filed in the Superior Court, are attached
8 hereto as Exhibit "A".

9 2. Plaintiff made multiple attempts to serve Defendants with the
10 Complaint, Amended Complaint and TRO. However, Plaintiff was unable to
11 effectuate proper service on any Defendant. On March 23, 2016, Plaintiff mailed a
12 Notice and Acknowledgement of Receipt to counsel for Defendants Kinetacore,
13 US Dry Needling and Physio Products, LLC sometimes d/b/a IDryNeedle, Paul
14 Killoren, Edo Zylstra, and Austin Woods. A signed copy of the Notice and
15 Acknowledgement is attached hereto as Exhibit "B". Counsel for the Defendants
16 executed and returned the Notice and Acknowledgment to Plaintiff on April 11,
17 2016.

18 3. Plaintiff and Defendants jointly filed a Stipulation Continuing the
19 Hearing on Preliminary Injunction and Setting Briefing Schedule with the Orange
20 County Superior Court on March 17, 2016. A copy of the Stipulation with Proof
21 of Service is attached hereto as Exhibit "C".

22 4. The Complaint, Amended Complaint, and TRO assert claims arising
23 out of alleged violations by Defendants of California public health and safety laws
24 regarding acupuncture and physical therapy. These claims center on a physical
25 therapy conference which occurred at the Anaheim Convention Center from
26 February 17 through 20, 2016. Plaintiff seeks to permanently enjoin Defendants
27 from selling, either in-person or online, or otherwise furnishing or marketing any
28 of Defendants' products and services, including physical therapy training services

1 and the sale of Myotech Dry Needles, at any time, in the State of California,
2 including but not limited to the conference.

3 5. Based on the allegations of the pleadings, Defendants are informed
4 and believe that Plaintiff is and was at the time of filing of this action and of this
5 Notice of Removal, a California non-profit organization, with its principal place of
6 business in Oakland, California. [See Amended Complaint at ¶ 16]

7 6. At the time of the filing of the pleadings and this Notice of Removal,
8 defendant Kinetacore, LLC is and was a limited liability company organized under
9 the laws of the State of Colorado, with its principal place of business in Brighton,
10 Colorado. The sole member of the Kinetacore LLC is defendant Edo Zylstra, an
11 individual whose citizenship and place of residence is the State of Michigan. The
12 citizenship of a limited liability company is determined by the citizenship of its
13 members. *See Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th
14 Cir. 2006).

15 7. At the time of the filing of the pleadings and this Notice of Removal,
16 defendant US Dry Needling and Physio Products LLC, sometimes d/b/a
17 IDryneedle, is and was a limited liability company organized under the laws of
18 Washington, with its principal place of business in Kirkland, Washington. The
19 members of US Dry Needling are defendant Edo Zylstra, a citizen and resident of
20 the State of Michigan, defendant Paul Killoren, a citizen and resident of the State
21 of Washington, defendant Austin Woods, a citizen and resident of the State of
22 Washington, Michael Killoren, a citizen and resident of the State of Wisconsin,
23 and David Vanderploeg, a citizen and resident of the State of Wisconsin.

24 8. At the time of the filing of the pleadings and this Notice of Removal,
25 defendant IDryneedle was a "DBA" of defendant US Dry Needling. The
26 citizenship and principal place of business of IDryneedle is irrelevant for purposes
27 of establishing complete diversity of citizenship. *See Frith v. Blazon-Flexible
28 Flyer, Inc.*, 512 F.2d 899, 900 (5th Cir. 1975).

1 9. At the time of the filing of the pleadings and this Notice of Removal,
2 Defendants are informed and believe that defendant Medbridge, Inc., is and was a
3 corporation incorporated under the laws of the State of Washington, with its
4 principal place of business in Seattle, Washington. However, Medbridge, Inc. was
5 dismissed with prejudice from this action on March 3, 2016.

6 10. At the time of the filing of the pleadings and this Notice of Removal,
7 defendant Red Coral Acupuncture Supplies PTY, LTD is and was a foreign
8 company organized under the laws of Australia. Defendants are informed and
9 believe that Plaintiff has never served defendant Red Coral.

10 11. As noted above, defendant Zylstra is a citizen and resident of the State
11 of Michigan, and defendants Woods and Killoren are citizens and residents of the
12 State of Washington.

13 12. Pursuant to 28 U.S.C. § 1441(b), diversity suits are removable "if
14 none of the parties in interest properly joined and served as defendants is a citizen
15 of the State in which such action is brought." Here, none of the named Defendants
16 is a citizen of the State of California.

17 13. The amount in controversy in this action is in excess of \$75,000,
18 exclusive of interests and costs. Plaintiff seeks to permanently enjoin Defendants
19 from the marketing and sale of dry needles, physical therapy training courses, and
20 other products and services in the State of California. The value of these products
21 and services is in excess of \$500,000, and Defendants would be injured in an
22 amount no less than \$500,000 should Plaintiff succeed in its claims.

23 14. This, therefore, is a civil action of which this Court has original
24 jurisdiction under 28 U.S.C. §1332(a), and is one that may be removed to this
25 Court by Defendants pursuant to 28 U.S.C. §§ 1441 and 1446, in that there is
26 complete diversity of citizenship between Plaintiff on the one hand, and
27 Defendants on the other, and the matter in controversy exceeds the sum of
28 \$75,000, exclusive of interest and costs.

1 15. Furthermore, this Notice of Removal is timely filed pursuant to 28
 2 U.S.C § 1446(b) which provides that, "[t]he notice of removal of a civil action or
 3 proceeding shall be filed within thirty days after the receipt by the defendant,
 4 through service or otherwise, of a copy of the initial pleading setting forth the
 5 claim for relief upon which such action or proceeding is based..." In order to
 6 trigger the thirty-day removal period, receipt of the summons and complaint must
 7 be by proper service. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526
 8 U.S. 344, 354 (1999). The earliest service of the pleadings was properly
 9 effectuated on Defendants was March 23, 2016. Removal is timely.

10 16. Pursuant to 28 U.S.C § 1446(d), a copy of this Notice of Removal is
 11 being filed with the Clerk of the Orange County Superior Court.

12 17. Pursuant to 28 U.S.C § 1446(d), Defendants are providing this Notice
 13 of Removal to Plaintiff.

14 WHEREFORE, Defendants KINETACORE, LLC, US DRY NEEDLING
 15 AND PHYSIO PRODUCTS, LLC, sometimes d/b/a IDRYNEEDLE, PAUL
 16 KILLOREN, EDO ZYLSTRA, and AUSTIN WOODS hereby remove this action
 17 from the Superior Court of California for the County of Orange, to the United
 18 States District Court for the Central District of California – Southern Division.
 19 Defendants request that this Court exercise jurisdiction over all further proceedings
 20 in this action.

21 DATED: April 19, 2016

SELMAN BREITMAN LLP

22
 23
 24 By: /s/ Matthew C. Elstein
 25 MATTHEW C. ELSTEIN
 26 LORRIE A. WALKER

27 Attorneys for Defendants KINETACORE, LLC,
 28 US DRYNEEDLING and PHYSIO PRODUCTS
 LLC, PAUL KILLOREN, EDO ZYLSTRA, and
 AUSTIN WOODS